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**April 18, 2008**

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: October 30, 2007

Case Number: TSO-0562

This Decision concerns the eligibility of XXXXXX (hereinafter referred to as "the individual") to hold an access authorization<sup>1</sup> (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be granted at this time.

**I. Background**

The individual is employed by a Department of Energy (DOE) contractor in a position that requires him to hold a security clearance. In July 2006, the individual submitted a request for a security clearance and shortly thereafter, the Office of Personnel Management (OPM) began an investigation into the individual's background. In order to resolve questions arising from the OPM investigation, the local DOE security office (LSO) conducted a Personnel Security Interview (PSI or Exhibit (Ex. 11)) with the individual in March 2007. The PSI did not resolve the concern and the LSO referred the individual to a DOE consultant-psychiatrist (DOE psychiatrist) for a psychiatric examination. The DOE psychiatrist examined the individual in May 2007 and memorialized her findings in a report (Psychiatric Report or Exhibit (Ex. 6)). Based on her findings, the DOE psychiatrist did not diagnose the individual as having an alcohol disorder; however, she did conclude that the individual had a recent problem with using alcohol habitually to excess and had not shown adequate evidence of reformation.

On September 4, 2007, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying criteria set

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<sup>1</sup> Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a).

forth in the security regulations at 10 C.F.R. § 710.8, subsections (j) and (l) (hereinafter referred to as Criteria J and L, respectively).<sup>2</sup>

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On November 2, 2007, the Director of the Office of Hearings and Appeals (OHA) appointed me the Hearing Officer in this case. At the hearing, four witnesses testified. The DOE psychiatrist testified on behalf of the agency. The individual testified on his own behalf and also elected to call his brother and his colleague as witnesses. In addition to the testimonial evidence, the DOE submitted 15 exhibits into the record; the individual submitted none. The transcript taken at the hearing shall be hereinafter cited as “Tr.” Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as “Ex.”

## II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the

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<sup>2</sup> Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j). Criterion L relates to information that a person “[e]ngaged in any usual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility.” 10 C.F.R. § 710.8(l).

motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After due deliberation, it is my opinion that the individual's access authorization should not be granted at this time because I cannot conclude that granting the access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

### **A. Findings of Fact**

The individual is a 19-year old male who had his first drink of alcohol at the age of six or seven. Ex. 11 at 14-15. During his childhood, the individual's father would provide alcohol, approximately one-half of a 12-ounce beer, as a reward for good behavior. *Id.* at 16. By the time the individual was fifteen or sixteen years of age, his father gave him a whole beer to drink. *Id.* at 17. Although he was underage, his father continued to give him a beer on special occasions, maybe once or twice a month, until the individual became 18 years old. *Id.* at 18.

Additionally, the individual admitted to consuming alcohol to excess in March 2006 while he was a senior in high school. *Id.* at 58. The individual began "experimenting" while he was alone in his room. *Id.* at 60. He recalled drinking one-third of a bottle of vodka, which he equates to eight to ten shots of alcohol. *Id.* He admitted that his intention was to stop drinking at around five shots, but his judgment failed him after three shots of alcohol. *Id.* According to the individual, he vomited and experienced a blackout as a result of his alcohol consumption. *Id.* at 61; 72. He further admitted to coming to work with a hangover and stated that he continued to drink while alone in the house. *Id.* at 65-66.

In March or April of 2006, the individual moved out of his parent's home. *Id.* at 19. The individual was seventeen years old at this time. *Id.* at 21. Sometime between April and May of 2006, the individual went to a party where he consumed two beers within fifteen minutes. *Id.* at 22. His alcohol consumption increased and he began attending parties twice a month. *Id.* at 27. He consumed two to four drinks of alcohol (two beers and two shots of hard liquor) at each of those parties. *Id.* He continued drinking alcohol at parties until he graduated from high school, sometime in May of 2006. *Id.* After graduation from high school, the individual began drinking one or two shots of alcohol, along with one or two beers, within an hour. *Id.* at 28.

The night of the individual's eighteenth birthday, he attended a party where he consumed ten alcoholic drinks (five beers and five shots). *Id.* at 38. The individual admitted that he felt "hung-over" and "intoxicated." *Id.* at 40. The individual then decided that he had a "bad experience" at the party and immediately stopped drinking. *Id.* at 41. He felt that he drank "too much" and that drinking alcohol was no longer "enjoyable." *Id.* The individual stated that drinking alcohol was fun while he was younger, because underage drinking is illegal behavior. *Id.* In July 2006, the individual submitted a request for a security clearance and shortly thereafter OPM began an investigation into the individual's background.

The individual stopped drinking alcohol after the birthday party but resumed his consumption

of alcohol in August of 2006, while hanging out with his 23-year old brother and his friends. *Id.* at 43. The individual drank very little until he moved in with his brother in late September 2006. *Id.* at 50. While living with his brother, the individual had access to alcohol around the house. *Id.* at 52. According to the individual, while living with his brother, he gave his brother money to buy him alcohol. *Id.* at 64. The individual asserted that his brother is aware of the penalties associated with buying alcohol for an underage individual, but that his brother didn't care. *Id.*

From September 2006 until March 2007, the individual admitted to consuming alcohol almost daily. *Id.* at 52-53. On average, the individual consumed one or two beers daily, along with one or two one-ounce shots of whisky or vodka. *Id.* In addition, the individual admitted to being intoxicated four times in February 2007, only one month prior to his PSI. *Id.* at 57.

In order to resolve questions arising from the OPM investigation, the LSO conducted a PSI with the individual in March 2007. During the March 2007 PSI, the individual indicated that he did not intend to drink alcohol in the future. *Id.* at 71. However, based on the individual's account of his daily alcohol consumption, the LSO recommended that the individual be referred to a DOE psychiatrist for a psychiatric examination. *Id.* at 101.

The DOE psychiatrist examined the individual in May 2007. Ex. 6 at 1. At the beginning of his evaluation, the individual told the DOE psychiatrist that he stopped drinking in March 2007, after his PSI. *Id.* at 5. However, the individual later stated that he consumed alcohol with his parents three weeks prior to the May 2007 psychiatric evaluation. *Id.* at 7. When asked to explain, the individual stated that he meant that he would no longer engage in illegal alcohol consumption. *Id.* He continued that it is lawful in his state for a person under the age of 21 to consume alcohol, if the alcohol is provided by a parent. *Id.* at 5; Ex.13. Thus, the individual stated that after his March 2007 PSI, he limited his alcohol consumption to one drink with his parents. *Id.* at 8.

The DOE psychiatrist requested that the individual submit to a test that would determine if he consumed alcohol within the previous week. *Id.* at 9. Initially, the individual agreed to submit to the testing. *Id.* The individual later remembered that he may have consumed an O'Doul's<sup>3</sup> within the previous week and no longer wished to submit to the testing. *Id.*

Based on her findings, the psychiatrist made no diagnosis; however, she concluded that the individual had a recent problem with using alcohol habitually to excess. *Id.* at 12. The DOE psychiatrist could not make a diagnosis because there had not been any psychosocial legal consequences of the individual's drinking, such as operating a motor vehicle under the influence of alcohol or an alcohol related arrest. Tr. at 84. The DOE psychiatrist further concluded that although there are no rehabilitation guidelines for a habitual user of alcohol to excess, the individual has not shown adequate evidence of reformation from his alcohol problem. Ex. 6 at 12. In order to demonstrate reformation from his use of alcohol habitually to excess, the DOE psychiatrist recommended in her report that the individual either: (1) attend a professionally-led substance abuse education program for a minimum of 48 hours

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<sup>3</sup> O'Doul's is a premium, non-alcoholic malt beverage. According to the DOE psychiatrist, O'Doul's may contain a minimal trace of alcohol. Tr. at 81.

and demonstrate total abstinence from alcohol for at least six months; or (2) demonstrate one year of total abstinence, as supported by random testing. *Id.* at 12-13.

In August 2007, the individual was attending a party where the police had been called due to underage drinking. He received a citation for a minor in possession of alcohol, in violation of a city ordinance. Ex. 9; Tr. at 46-50.

## **B. DOE's Security Concerns**

As previously noted, the LSO cites Criteria J and L in the Notification Letter. With regard to Criterion J, the LSO relies on the DOE psychiatrist's opinion that the individual had a recent problem with using alcohol habitually to excess and had not shown adequate evidence of reformation. Ex. 6 at 12-13. In support of its position, the DOE cites several facts : (1) despite knowing it is illegal to consume alcohol while under the age of 21, the individual consumed alcohol regularly from March 2006, when he was 17 years old, until the PSI conducted on March 5, 2007, when he was 18 years old; (2) by his own admission, in February 2007, the individual consumed alcohol almost daily and drank to the point of intoxication once a week; (3) between March 2006 and July 2006, the individual consumed alcohol to the point of intoxication two times per month; and (4) the individual admitted to experiencing a blackout upon consuming eight to ten shots of vodka. As for Criterion L, the LSO refers to inconsistent statements that the individual allegedly made to the DOE psychiatrist in May 2007, and to the Personnel Security Specialist in March 2007, regarding his intention to refrain from drinking while he is underage. Ex. 6 at 7-8; Ex. 11 at 71. Also, after stating during his psychological evaluation that his last drink of alcohol was three weeks prior to the evaluation, the individual refused to submit to a test that determined alcohol consumption within the past week, stating that he remembered that he had consumed a non-alcoholic beverage.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's alcohol use under Criteria J and L. As for Criterion J, the excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See* Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000).

As regards the individual's behavior described in the Notification Letter under Criterion L, "[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information." *See* Guideline E of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*

issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. TSO-0538), <http://www.oha.doe.gov/cases/security/tso0538.pdf>.

## **C. Hearing Testimony**

### **1. The Individual's Brother**

The individual presented the testimony of his brother, a 24-year old currently employed in the family business. Tr. at 17-18. The brother testified that the individual lived with him from September 2006 until June 2007. *Id.* at 15. The brother stated that while he did not buy alcohol for the individual, he kept a 12-pack of beer and other alcoholic beverages around the house. *Id.*; *Id.* at 25. While living together, he observed the individual drinking five beers a week during the months of September until November of 2006. *Id.* at 21.

Since November of 2006, with the exception of family events or while in the presence of their parents, he did not recall seeing the individual consume alcohol. *Id.* Further, the brother stated that he had not seen the individual drinking outside of the presence of their parents at any time during the entire calendar year of 2007. *Id.* at 22. During the time that the individual resided with him, he stated that he never saw the individual intoxicated nor did he observe the individual operate a motor vehicle while under the influence of alcohol. *Id.* at 18-19.

The brother further testified that during regular visits with their parents, he observed the individual have a beer or a shot, but usually not more than one drink during each occasion. *Id.* at 19-20. He stated that he has seen the individual drinking wine during toasts at family events, but that these occasions were rare. *Id.* at 22. He estimated that he observed the individual drinking alcohol a maximum of two times in the presence of their parents during calendar year 2007. *Id.* at 22-23. He further testified that he never observed the individual having any problems going to school or to work as a result of his drinking. *Id.* at 24. Also, he was aware that the individual went to parties since he moved out, but had never heard of him drinking at any party. *Id.* at 27-28. He stated that he did not know the nature of the parties the individual attended because he did not hang out with the individual very often. *Id.* at 28.

### **2. The Individual's Colleague**

A colleague of the individual, a 28-year old male who is also his roommate, testified on his behalf. He testified that prior to becoming his roommate in the fall of 2007, the individual was an employee in his department who he had very little contact with. *Id.* at 72. The colleague stated that he typically did not socialize with the individual because of the age difference. *Id.* He explained that prior to the individual moving in with him, he told the individual that he could not drink in his house. *Id.* at 74. He stated that there is alcohol in his home that is kept in the common area and that anyone who is in the home has access to it. *Id.* at 73. Despite the presence of alcohol in their residence, the colleague testified that he has never seen the individual drinking alcohol and that he was not aware of the individual

ever drinking alcohol. *Id.* at 74. The colleague further testified that he never noticed any of the alcohol kept in the home missing at any time. *Id.*

### **3. The Individual**

The individual testified that he had completed over five months of abstinence at the time of the hearing. *Id.* at 90-91. He further stated that this period of abstinence included time spent around his parents. *Id.* at 91. He affirmed that his last drink was in August 2007, the night that he received the citation. *Id.* He acknowledged that the steps he took in the past towards not consuming alcohol were unsuccessful. *Id.* at 100. He admitted that, in the past, he did not value sobriety, which he now deems necessary to successfully complete an alcohol treatment program. *Id.* at 58.

The individual intends to abstain from drinking alcohol and explained that he has developed a plan of action in which he will avoid people and places that may cause him to drink alcohol. *Id.* at 100. He stated that he would follow the advice of the DOE psychiatrist and enroll in a substance abuse or similar alcohol program. *Id.* at 101.

### **4. The DOE Psychiatrist**

The DOE psychiatrist was present during the entire proceeding and testified at the end of the hearing. She first evaluated the individual in May 2007, and concluded that the individual had been a user of alcohol habitually to excess in the recent past, and had not shown adequate evidence of reformation. Ex. 6 at 12. At the time of the interview, based on the criteria set forth in the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*, the individual did not present a diagnosable illness or a condition. Tr. at 84. The DOE psychiatrist testified that she made no diagnosis due to the fact that there had not been any psychosocial legal consequences of the individual's drinking, such as operating a motor vehicle under the influence of alcohol or an alcohol related arrest. *Id.*

During the hearing, the psychiatrist heard new evidence and made additional findings that caused her to reevaluate the individual. *Id.* at 85. Based on the individual's subsequent alcohol related arrest, as well as additional information regarding the individual's alcohol consumption, the DOE psychiatrist concluded that according to the *DSM-IV TR*, the individual met the criteria for alcohol abuse within the past year. *Id.* at 85; 93. The psychiatrist also concluded that the individual was in a worse condition at the hearing than at the time of his May 2007 evaluation. *Id.* at 93. The psychiatrist was surprised that the individual had not proactively enrolled in and completed an alcohol education program after receiving her report. *Id.* at 89. Based on her new diagnosis, the psychiatrist concluded that the individual did not demonstrate adequate evidence of rehabilitation or reformation. *Id.* at 89. The psychiatrist noted that she no longer recommends six months of abstinence because the individual now meets the criteria for alcohol abuse, a diagnosable disorder. *Id.* at 87.

To show adequate evidence of rehabilitation based on her new diagnosis of alcohol abuse, the DOE psychiatrist recommended that the individual abstain from consuming alcohol, with or without treatment, for a minimum of 12 months, or ideally, until he is of legal age to drink alcohol. *Id.* at 91; 96. The DOE psychiatrist further recommended that the individual voluntarily enroll in and attend a professionally-led substance abuse treatment program for a

minimum of 48 to 50 hours or, in the alternative, a six-month education program with participation in aftercare. *Id.* at 94-95. The DOE psychiatrist found that the individual could not be considered adequately rehabilitated until he achieved a minimum of one year of sobriety, beginning August 2007. *Id.* at 95.

The DOE psychiatrist testified about the statements that the individual made during his May 2007 psychiatric evaluation that formed the basis of the Criterion L security concern. *Id.* at 78-79. The DOE psychiatrist explained that, at the May 2007 evaluation, the individual stated that he had not consumed alcohol since his March 2007 PSI. *Id.* at 79. During the evaluation, the DOE psychiatrist requested that the individual submit to an alcohol test to confirm that he had not consumed alcohol within the previous week. *Id.* However, after the individual admitted to consuming alcohol while recently visiting his parents, the DOE psychiatrist testified that both she and the individual decided to forgo the testing. *Id.* at 80. The DOE psychiatrist opined that the individual's behavior: (i.e. his admission to consuming alcohol after his March 2007 PSI and reluctance to submit to the alcohol test) coupled with his youth and immaturity, all raised issues regarding the individual's credibility. *Id.* at 92.

#### **D. Evidence of Rehabilitation and Reformation**

After a careful review of the record in this case, I find that there is no evidence that contradicts the individual's testimony that he has abstained from alcohol for five months. The DOE psychiatrist listened to the testimony during the hearing and agreed that the individual has been abstinent for about five months. None of the witnesses had seen the individual drink alcohol in at least five months. I further find, based on my observation of the individual at the hearing, that he now understands the seriousness of his behavior and demonstrates a healthy attitude towards rehabilitating himself from alcohol abuse. At the conclusion of the hearing, he appeared free of denial about the severity of his alcohol problem. He seems committed to enrolling in and completing a substance abuse treatment program.

Nonetheless, the DOE psychiatrist concluded that the individual has not had sufficient treatment nor been abstinent long enough to demonstrate adequate evidence of rehabilitation or reformation from alcohol abuse within the past year. In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. *See Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the DOE psychiatrist, the only mental health professional at the hearing, testified that the individual did not present adequate evidence of rehabilitation or reformation. The psychiatrist argued that there is an unacceptable risk of relapse if the individual does not complete one full year of treatment and sobriety, given the individual's pattern of excessive alcohol consumption and his broken promises that he would not drink alcohol in the future.

I agree with the conclusion of the DOE psychiatrist for the following reasons. First, the LSO warned the individual during the March 2007 PSI that further drinking, along with any alcohol related arrest, could jeopardize his security clearance application. The individual stated that he understood and would refrain from further alcohol consumption. However, at his May 2007 psychiatric evaluation, the individual admitted to consuming alcohol three weeks prior to the evaluation. In August 2007, the individual was cited by the police for



being a minor in possession of alcohol. Thus, despite warnings from the LSO and the individual's promises to abstain from alcohol, the individual continued to drink. Finally, despite a history of underage drinking and a psychiatric evaluation that noted his excessive drinking, the individual has never enrolled in any form of alcohol treatment. Therefore, based on a review of the record, I agree with the DOE psychiatrist that the individual has not demonstrated adequate evidence of rehabilitation or reformation from alcohol abuse.

#### **IV. Conclusion**

In view of the unresolved Criteria J and L concerns, and the record before me, I cannot find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted at this time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye  
Hearing Officer  
Office of Hearings and Appeals

Date: April 18, 2008